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C O N F I D E N T I A L SECTION 01 OF 02 PRETORIA 004619

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DEPT FOR AF, AF/S
NSC FOR SENIOR AFRICA DIRECTOR

E.O. 12958: DECL: 11/08/2016
TAGS: [PGOV](#) [PREL](#) [PINR](#) [KJUS](#) [SF](#)
SUBJECT: SHAIK APPELLATE DECISION PAVES ROAD FOR ZUMA
PROSECUTION

REF: A. PRETORIA 4593

[1](#)B. PRETORIA 4489

[1](#)1. (C) SUMMARY. US Department of Justice Intermittent Legal Adviser (ILA) believes that the Supreme Court of Appeal's (SCA) 7 November verdict upholding Schabir Shaik's conviction is legally sound, provides little to nothing for Shaik to credibly challenge, and further bolsters the State's case against former Deputy President Jacob Zuma. The National Prosecuting Authority (NPA) will likely recharge Zuma and French arms dealer Thint again soon after the SCA rules on separate appeals regarding evidence seized in August 2005 from properties owned by Zuma and his attorney. These charges likely will be upgraded to include racketeering, giving incentive to Thint to turn against Zuma before the case goes back to court. END SUMMARY.

SHAIK'S FAILED APPEAL CLEARS WAY FOR NPA...

[1](#)2. (C) U.S. Department of Justice Intermittent Legal Adviser (ILA), who has been advising NPA's Zuma team on the applicability of South Africa's racketeering law, told PolOff on November 7 that the SCA's refusal to overturn Schabir Shaik's corruption and fraud convictions is legally sound. While ILA was unwilling to completely discount the possibility of an appeal to the Constitutional Court, he saw nothing in the SCA decision that would provide credible grounds for such a challenge. The NPA, which expected the outcome, is now certain to go ahead with its prosecution of former Deputy President Jacob Zuma and French arms dealer Thint. However, ILA believes that the NPA will wait for the Court's final decision on the admissibility of the evidence seized from Zuma's properties and those of his attorney, Michael Hulley, before refiling charges. The NPA is confident that evidence gathered in the execution of the controversial search warrants will be allowed since the warrants were overturned for "nonsensical reasons," according to ILA, who pointed out that one cannot box up financial records, hand them to your attorney, and then claim attorney-client privilege.

...REGARDLESS OF FUTURE JUDGMENTS

[1](#)3. (C) The SCA's ruling on the search warrants, however, is unlikely to make or break the NPA's case. ILA believes that

the State has enough evidence from the Shaik trial to convict Zuma; evidence gathered from Zuma's house and attorney is "icing on the cake." If the State loses the search warrant appeals, they simply will try to focus on proving (again) that Shaik made 238 payments to Zuma, totalling 1.2 million rand. If the State wins the search warrants appeals, then they also will introduce that evidence, which shows that Shaik paid an additional 2.8 million rand to Zuma in 200 additional installments made after Shaik was charged in 2003.

The infamous encrypted fax from the Shaik appeal, which states that Zuma would receive an additional 500,000 rand payment from Thint, is "third-tier evidence," according to ILA.

NPA TO REFILE REVAMPED CHARGES

14. (C) Based on the full text of the SCA judgment, ILA said he "would bet his last nickel" that Zuma and Thint will be co-charged with racketeering under the 1998 South African Prevention of Organised Crime Act. He believes this will likely give Thint great incentive to strike a deal with the prosecution -- perhaps by giving testimony against Zuma in exchange for immunity -- before the case goes back to court. Shaik's various businesses, which the court refers to collectively as the Nkobi group, will be named as the facilitating organization, with each of the 438 payments from Shaik to Zuma, comprising an individual criminal act. According to ILA, separating the payments will bolster the State's case by establishing clear and distinct patterns of corruption.

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SELF-IMPOSED POLITICAL PRESSURE

15. (C) ILA, who has worked on and off at NPA for the past 3 years, said he has never heard of President Mbeki or anyone else in the Presidency putting pressure on the NPA regarding the Zuma case. Further, he believes that the NPA Zuma team is extremely well-qualified and professional and will win if left alone. The case, thus far, has not suffered from sloppy legal preparations. Imagined political fears and considerations, beginning with former NPA head Bulelani Ngcuka's decision in 2003 not to pursue corruption charges against Zuma at the same time as Shaik for fear of political backlash, have played a role. The danger at this point, according to ILA, is that media attention or spurious accusations of politically-motivated footdragging will cause a sudden rush to re-charge Zuma before the appeals process is finished and the prosecutors are ready. (COMMENT: Immediately after Shaik was found guilty in 2005, the State charged Zuma before obtaining search warrants, which likely contributed to the State's inability to issue Zuma a final a charge sheet and the case being struck off the roll. END COMMENT)
BOST